No. 80-936

IN THE

Supreme Court of the U

OCTOBER TERM, 1980

HEINOLD COMMODITIES, I
THOMSON & MCKINNON AUCHINCLOSS K

—v.—

NEIL LEIST, PHILIP SMITH and I

HEINOLD COMMODITIES, I
THOMSON & MCKINNON AUCHINCLOSS K

—v.—

NATIONAL SUPER SPUDS, INC.

**BRIEF IN OPPOSITION TO JOINT PETIT
OF CERTIORARI TO THE UNITED STA
APPEALS FOR THE SECOND C**

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and the Class*

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QUESTION PRESENTED F

**IS THERE AN IMPLIED PRIVATE
AGAINST FUTURES COMMIS
("FCMs") REGISTERED WITH TH
TURES TRADING COMMISSION
AGES SUSTAINED AS A CONSE
TION BY THE FCMs OF PR
COMMODITY EXCHANGE ACT
THEREUNDER SETTING TRADIN
SCRIBING CHEATING OR DEFRA
AND MANIPULATION OF PRICES?**

PARTIES BELO

Three separate actions were consoli
court below:

No. 79-7402

Appellants: Neil Leist, Philip Smi

Appellees: Heinold Commoditi
Thomson & McKinnon Auch
("Thomson"), Clayton Broke
The New York Mercantile
change"), Richard B. Levine
Alfred Pennisi.

No. 79-7464

Appellant: Incomco.

Appellee: The Exchange.

No. 79-7482

Appellants: National Super Spuds
ter, Jr., Willard C. Shiner, Eu
ard Welts, Raymond Rothberg

Theodore Brinek,
Romminger.

Appellees: Heinold and

Respondents National S
individual capacities and as
pursuant to Federal Rules o
are parties solely in No. 7
Only petitioners Heinold a
action. This response, there

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Supreme C

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NATIO

OPPOSITION TO
TO THE UNITE

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Respondents Nat
they represent seek
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contract ("the Con

of net long positions in the Contract during the final weeks of trading, respondents and the class claim that the market was manipulated and that the price of the Contract was artificially depressed to their detriment.

Petitioners Heinold and Thomson were two of the brokers (FCMs) for the holders of short positions in the Contract who were alleged to have manipulated the market.[1] The complaint alleges that petitioners aided and assisted the manipulation and failed to carry out rules and regulations designed to prevent such manipulation.[2]

Two causes of action against petitioners were included in the complaint. One asserted claims under various provisions of the Commodity Exchange Act ("the Act"), 7 U.S.C. § 1 et seq., which regulates trading in commodity futures and which proscribes manipulative activity. The second cause of action asserted a violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, claiming that the concerted manipulation of the market price by respondents and their customers constituted unlawful price fixing.

After discovery, upon motion of petitioners, the District Court dismissed the count brought under the Act, concluding that no private cause of action could properly be implied for violation of the provisions of the Act. Although that decision did not dispose of the antitrust count, the District Court entered a final judgment pursuant to Federal Rule of Civil Procedure 54(b).

Respondents took a timely appeal from that final judgment to the Court of Appeals for the Second Circuit. In an exhaus-

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1 Respondents and the class have entered into a settlement with the holders of the short positions and those defendants below are therefore not parties to the petition.

2 The Exchange was also named as a defendant below. It too, with a third broker defendant—Clayton Brokerage Company of St. Louis, Inc.—has entered into a settlement with the class and is therefore not a party to the petition in No. 80-936.

tive opinion, the majority of the court (Judges Friendly and Kearse) concluded, based upon an analysis of the Act itself and its legislative history, that Congress, in reenacting the Act in 1974, intended to preserve an implied private cause of action against both the FCMs and the Exchange for violation of the provisions of the Act. The court below therefore reversed the judgment of the District Court and reinstated respondents' count under the Act. A request by petitioners and the Exchange for a rehearing en banc was denied. Petitioners have now sought discretionary review by this Court.

SUMMARY OF REASONS FOR DENYING THE WRIT

At the time the petition was filed in this case, there was no conflict among the Courts of Appeals as to the availability of an implied cause of action under the Act. In the six years since the Act was reenacted with amendments by Congress in 1974, the issue raised by petitioners had been decided by two Courts of Appeals, the court below and the Court of Appeals for the Sixth Circuit.[3] Both of those courts not only reached the same result—that traders do have a private cause of action under the Act against FCMs—but did so by virtually identical reasoning, based on applicable precedents of this Court relating to implication of private causes of action under federal statutes. Moreover, a third Court of Appeals—that for the Seventh Circuit—reached the same conclusion under the Act just prior to its reenactment in 1974.[4]

After the petition was filed, however, the Court of Appeals for the Fifth Circuit did decide *Rivers v. Rosenthal & Com-*

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3 *Curran v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 622 F.2d 216 (6th Cir. 1980), petition for writ of certiorari filed August 9, 1980, No. 80-203.

4 *Deaktor v. L.D. Schreiber & Co.*, 479 F.2d 259 (7th Cir.), rev'd on other grounds sub nom. *Chicago Mercantile Exchange v. Deaktor*, 414 U.S. 113 (1973).

pany, No. 79-1313 (December 16, 1980)[5] in which it reache result contrary to that of the *Curran* court and of the co below. In terms of when courts may properly imply a priv cause of action under federal legislation, however, the result conflict is of limited significance. The Act was reenacted 1974, after consistent court decisions implying a private ca of action, but prior to this Court's decisions in *Transame Mortgage Advisors, Inc. v. Lewis,* 444 U.S. 11 (1979) *Touche Ross & Co. v. Redington,* 442 U.S. 560 (1979). narrow issue in *Curran,* in *Rivers* and in the court bel therefore, was the proper test of congressional intention in limited context of such a reenactment in the rather short t frame before the new and stricter standard adopted by Court for implication of private causes of action beca apparent. Consequently, beyond the Act itself, none of th decisions is likely to have any broad, precedential significar

Nor have petitioners demonstrated any justification for cretionary review of the decision below by any of the ot standards traditionally applied by this Court to petitions fo writ of certiorari. Nor have they demonstrated any ot analogous compelling reason for such review.

Neither the court below nor the Court of Appeals for Sixth Circuit departed from any accepted or usual course judicial proceedings. As mandated by this Court in *Cor Ash,* 422 U.S. 66 (1975), both courts sought to ascertain intention of Congress from the context of the Act itself from its legislative history. Both courts disavowed any atte at judicial legislation.

Likewise, the decision below and the *Curran* decision do conflict with the applicable decisions of this Court. The mary focus of both courts was to ascertain the intention Congress. Each of this Court's recent pronouncements v

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5 That opinion is reproduced in the Joint Appendix to Supplem Briefs filed by petitioners, Clayton and the Exchange. All page r ences will be to that Appendix.

respect to implication of private causes of action under feder statutes was carefully considered and applied to the facts a more particularly to the 1974 reenactment of the Act. While t *Rivers* opinion also purports to apply the same precedent unlike the *Curran* court and the court below, it does not gi adequate effect to the very close similarity of this case *Cannon v. University of Chicago,* 441 U.S. 677 (1979).

Since the decision in *Cort v. Ash,* this Court has spoken least eight times as to the standards to be used by the feder courts in determining whether a private cause of action may implied under federal statutes that do not expressly provi therefor. Restatement of those principles by the Court in th case would not only belabor the point, but because of t peculiar circumstances of the Act's reenactment in 1974, wou not really address the narrow issue presented here. Therefor no compelling interests would be served by discretionary revie by this Court.

REASONS FOR DENYING THE WRIT

I.

THE DIFFERENCE BETWEEN THE COURT BELO AND THE FIFTH CIRCUIT DOES NOT PRESENT A ISSUE OF SIGNIFICANT PRECEDENTIAL VALUE

At the time the petition in this case was filed, there was conflict among the Courts of Appeals as to the availability an implied cause of action under the Act. In the six years sin the "overhaul" of the Act (p. 4045),[6] the issue of the existen of private causes of action under the Act had been decided two Courts of Appeals, the Court below, with jurisdiction ov New York, one of the two major commodity markets in t United States, and the Court of Appeals for the Sixth Circuit

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6 Page references are to the opinion below as reproduced in t appendix to the Joint Petition.

Curran v. Merrill Lynch, Pierce, Fenner & Smith, F.2d 216 (6th Cir. 1980).[7] Those decisions not on conflict, but by very similar lines of reasoning reache identical conclusions. Both Courts of Appeals b analysis by recognizing that the proper approach w the four part test articulated by this Court in *Cort* v U.S. 66 (1975) (*Curran,* 622 F.2d at 233; the court b 4060). Both courts were also sensitive to the more arguably more restrictive standards developed by which have placed primary emphasis on the intent of such as *Transamerica Mortgage Advisors, Inc. v.* U.S. 11 (1979); *Touche Ross & Co. v. Redington,* 44 (1979); and *Cannon v. University of Chicago,* 441 (1979) (*Curran,* 622 F.2d at 234; the court below at p 20, 4071, 4092). Likewise, the *Curran* court and below gave careful consideration to the legislative his 1974 revision of the Act to better ascertain co intent.

As a result of the analysis described, the *Cu* concluded:

> Our analysis of the effect of the 1974 amendm Commodity Exchange Act, within the framewo *v. Ash,* persuades us that the amendments did the validity of the preexisting implied priva action. Rather, Congress appears to have arme investors with a supplementary remedy in c reparations procedures to be followed un authority. (622 F.2d at 235).

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7 At least two other Courts of Appeals also believe that of action are available under the Act after the 1974 although their statements to that effect were without disc *Lynch, Pierce, Fenner, Smith v. Goldman,* 593 F.2d 129 Cir. 1979); *Hirk v. Agri-Research Council, Inc.,* 561 F.2 (7th Cir. 1977).

The court below became aware of the *Curran* de
after its own independent and exhaustive analysis,
fully concurred with the Sixth Circuit:[8]

> Having answered the first and third *Cort* quest
> affirmative and the fourth in the negative, a
> found as to the second that there is ample e
> legislative intent to preserve a private remed
> clude, in accordance with the Sixth Circuit's
> *Curran v. Merrill Lynch* . . . that the district c
> error in holding that no private cause of action i
> for violation of the CEA existed. (pp. 4104-41

In addition to the two Courts of Appeals that had
the existence of private causes of action subsequent t
amendments to the Act, a third appellate court—th
Seventh Circuit—with jurisdiction over the other m
modity market in Chicago—did examine the question
Act just prior to its amendment. In *Deaktor v. L.D.*
& Co., 479 F.2d 529 (7th Cir.), rev'd on other gr
nom. *Chicago Mercantile Exchange v. Deaktor,* 41
(1973), it too reached the same result.

> We therefore hold that a private cause of ac
> under the Commodity Exchange Act in fav
> plaintiffs in these actions and that the district
> correct in permitting the plaintiffs to maintai
> tions under the Commodity Exchange Act. (4
> 534).

However, after filing of the petition, the Court o
for the Fifth Circuit did decide *Rivers v. Rosentha*
pany, No. 79-1313 (December 16, 1980) in which it
result contrary to that of the *Curran* court and of

---

8 Judge Friendly, for himself and Judge Kearse, describe
opinion as "excellent and succinct. . . . (p. 4022 n.1).

below. In terms of when courts may prop
cause of action under federal legislation, h
conflict is of limited significance.

In *Cort, Transamerica* and *Touche Ro*
faced with statutes enacted by Congress
prior to enactment, of any preexisting judi
to the availability of an implied private cau
circumstance, the Court concluded that th
the intention of Congress and that it was i
proponents of such a cause of action
necessary congressional intent. Also, beca
not have relied upon decisions postdating
cases that had implied a cause of action fo
congressional intent could be ignored.

In the court below, and in *Curran* and
unusual factual situation was presented. A
one form or another, had been in the statu
it underwent substantial revision in 1974, i
of its coverage from certain specified agric
to inclusion of "all other goods and a
services, rights, and interests in which c
delivery are presently or in the future dealt
§ 2). The court below, therefore, as well
Rivers courts, all agreed that the congress
was that in 1974, not at some earlier time.[9]

Prior to the 1974 reenactment, however
as to the existence of an implied cause
antifraud and antimanipulation sections
remained unchanged) and had uniformly fo
action to exist.[10] Those decisions, then,
context in which Congress acted in 197
Transamerica or *Touche Ross*, in which a

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9 Court below at pp. 4071-72; *Curran*, 622
15a.

10 Court below at pp. 4054-55; *Curran*, 622 F
7a-8a.

to implication of private causes of actio
congressional intent, the existing law under
presumptively (and actually) known to Co
highly relevant to its intent. *Lorillard v. I*
580-81 (1975).

Moreover, the correctness under the mor
tive standards of *Cort, Transamerica* and *T*
pre-1974 cases interpreting the Act is likewi
examining the intent of Congress in 1974.
in *Rivers* has suggested that at the time c
ment, the state of the law was changing
decisions implying a cause of action cou
relied upon.[11] Rather, in determining Con
"contemporary legal context" had to be co
University of Chicago, 441 U.S. 677, 69
Court stated in *Brown v. GSA,* 425 U.S. 8

> . . . the relevant inquiry is not wh
> rectly perceived the then state of the l
> its perception of the state of the law

What led to the difference in result betw
and the *Curran* court on the one hand and
the other was not a difference of view as t
the 1974 reenactment or the applicability of
or *Touche Ross* to these facts. The sole poi
the placing of the burden of showing how
1974 to the then existing state of the law. T
the *Curran* court, correctly we submit, b
congressional awareness that courts had im
of action, the burden was on responde
congressional intent to alter the *status quo*
in a somewhat internally contradictory m

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11 *Rivers* at p. 8a.

12 See p. 15 n.20 *infra.*

burden on the proponents of a
demonstrate congressional intent t

Consequently, the difference in
of Appeals presents an issue of litt
the interpretation of the Act itself.
1975, Congress presumably woul
Court's decisions in *National R*
National Association of Railroad
(1974) and *Cort v. Ash*, 422 U.S
stricter trend they represent and th
ily have relied on earlier cases de
dards. On the other hand, as to
patterned on existing law, decisio
under whatever standard, would s
of Congress at the time of enacti
fore, could only arise again as to
prior to 1975 (or patterned after
before that date[14]) and which pri
construed as providing an implied

II.

THE COURT BELOW DID NO ACCEPTED AND USUAL PROCEED

Beginning with *Cort v. Ash*,
stressed that, before implying a pr
federal statute, a court must deter
of Congress. The constitutional s
the judiciary and legislature requ
preserves the appropriate distincti
two branches of government.

The court below, and the *Curra*
way from that course of judicial

13 *Rivers* at pp. 17a-20a.

14 See *Cannon v. University of Chi*

the four *Cort v. Ash* factors to t
majority below emphasized that
with its own notion of what wo
solely with the intention of Cong
this Court after *Cort v. Ash,* he

> . . . the effect of the deci
> that the ultimate touchston
> not judicial notions of what
> (p. 4092)

III.

THE COURT BELOW DID N TLED, IMPORTANT QUESTI CONFLICT WITH APPLI THIS C

The attention given by the cou
particularly to the intention of C
its decision is in conflict with an
Court.

> We turn now to the second
> tant, see *Touche Ross & C*
> *Cort* factors, "is there any i
> explicit or implicit, either to
> or to deny one?". . . . This
> examination of the legislativ
> ments. We conduct this, of
> the cautions in *Ernst & Ernst*
> 204 n.24 (1976) and *Piper v.*
> 430 U.S. 1, 31-32 (1977) a
> reliance on "passing referen
> gressional committee or sp
> not directly relevant to the i

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15 The *Curran* court likewise state

> Since the 1974 amendments, th
> centered primarily on the issu

In fact, it is petitione
disregarded the applicat
assertion that it is the inte
in 1974 that is determina
are correct that certain of
upon which respondents
reenacted without chang
cannot contest that the 1
ment of those sections a
Act's coverage. Consequ
reenacted, the court belo
of the law interpreting th
and Congress' awareness
no more than apply a ru
reaffirmed by this Court
580-81 (1978) that:

> Congress is presume
> judicial interpretati
> interpretation whe
> change. . . .

See also *Cannon*, supra,
States, 411 U.S. 526, 533

There can be little di
reenactment, those court
uniformly concluded that
was available under the
carefully analyzed in the
Deaktor opinion of the S
court below, therefore,
those decisions and adop

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enacting the 1974 am
scheme with the Con

16 As pointed out earlier
it was Congressional int

17 The presumption of co
on which the Court belo

However, such a pr
cause, as Judge Friendly
history confirms what c
to congressional awaren
persons had brought su
suant to the Act for fa
own rules. As Chairma
Agriculture pointed out
led exchanges to rescin
their potential liability.
What is of significance
Committee and eventua
regulation. Aware of th
regulation, Congress co
changes to enact necess
from such private cla
adopted. Instead, rathe
which it knew the co
§ 8(a)(7) (7 U.S.C. §
Futures Trading Comm
exchanges to alter or ad

As Judge Friendly ac

> Congress could no
> the underlying the
> compulsory regul
> private rights of a
> under the Act dem
> problem that had c
> right of action but
> the exchanges to a

23a, n.21. But in citing
to adopt the quote th
elected officials, like c
overlooked the corolla
edge may be assumed,
judicial interpretation
was the case of the an
Act.

Even Judge M
legislative history

> may demon
> gress of low
> under the A

although he disa
knowledge.[18]

Given the "aw
opinion below is
in *Cannon*. In fi
IX of the Educat
faced with a situ
a Court of App
under Title VI u
ing that Congres
others and appro

> It was *after*
> the other ca
> of its strict
> statute. We
> followed in
> gressional a
> temporary l
> in original)

This Court furth

> . . . in 197
> the impressi

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18 Judge Man
gate from the
Congress was
all lower cour

19 *Cort v. Ash*
Act in this ca

action and
able. . . .
gress corre
rather wha
Brown v.
710-11)[20]

As in *Cannon*
1974 decisions r
action under th
decisions by thi
as *Redington* a
was the intenti
understanding o
relied on conte
intention at the

The court bel
the Act or the
pursuant to app

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20 When *Can*
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sional approv
departure fro
is further co
Perhaps unco

> We agree
> born requi
> Congress'
> that Congr
> judiciary
> constructi
> would like

Yet in its con
to "any indic

> . . . giver
> congressio
> are bound

the court below was quite cognizant of the reparations procedure included in § 14 (7 U.S.C. § 18) by the 1974 amendments. However, petitioners and the court in *Rivers* are in error in asserting that the inclusion of such an express remedy is irrefutable evidence of congressional disapproval of implied causes of action theretofore recognized by the courts. The correct rule of law is that stated by this Court in *National Railroad Passenger Corporation v. National Association of Railroad Passengers,* 414 U.S. 453, 458 (1974):

> A frequently stated principle of statutory construction is that when legislation expressly provides a particular remedy or remedies, court should not expand the coverage of the statute to subsume other remedies. . . . But even the most basic general principles of statutory construction must yield to clear contrary evidence of legislative intent.

Consequently in *Cannon,* supra, at a time when this Court had already adopted a "decidedly different approach" to implication of private causes of action (441 U.S. at 699 n.24), the Court nonetheless stated:

> The fact that the other provisions of a complex statutory scheme create express remedies has not been accepted as a sufficient reason for refusing to imply an otherwise appropriate remedy under a separate section. (441 U.S. at 711)

The court below, therefore, correctly concluded that the reparations procedure did not end its inquiry of whether there was evidence of legislative intent to preserve a private cause of action. It found such clear legislative intent manifested in several respects, including the narrowness of the reparations procedure (that procedure does not include exchanges or traders such as the holders of short positions on whose behalf petitioner FCMs acted, all of whom were defendants in this case[21]), the general intent of Congress, often expressed, that

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21 See footnote 1 supra.

the 1974 amendments were intended to strengthen the Act and its enforcement, statements by key members of Congress that the reparations procedure was not intended to diminish court jurisdiction, and in the language of the jurisdictional savings clause, § 2(a)(1) (7 U.S.C. § 2), enacted in 1974. (pp. 4082-4090)

It is also true that some provisions of the Act upon which respondents rely for their cause of action proscribe certain conduct as criminal. If these provisions stood alone as "bare criminal statutes," that fact might militate against implication of a private cause of action. *Cort v. Ash*, 422 U.S. 66, 79-80 (1975). But they do not. They are part of a much broader statutory scheme providing for regulation of the commodities industry, much akin to the regulation of the securities industry provided for in the Securities Act of 1933 and the Securities Exchange Act of 1934. As petitioners themselves have pointed out, the Act also includes provisions for civil enforcement including actions by the CFTC for injunctive relief. In that respect, the Act bears much closer resemblance to those statutes referred to in footnote 11 of *Cort v. Ash* (422 U.S. at 79 n.11), for which private causes of action were implied, rather than the statute which was at issue in *Cort v. Ash* itself.[22]

In sum, the opinion of the majority below evidences great familiarity with the prior decisions of this Court applicable to the issue at hand. More importantly, the court below demonstrated a scholarly understanding of those opinions and a careful analysis of their interrelationship, particularly as applied to the particular statute at issue and the circumstances of its reenactment.

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22 Indeed if the Act did not, as it does, contain any proscriptive provisions, that might itself preclude implication of a private right of action. *Redington*, supra, 442 U.S. at 576.

IV.

NO OTHER COMPELLING REASON EXISTS FO GRANTING THE WRIT.

Since the decision in *Cort v. Ash,* this Court has spoken least eight times[23] as to the standards to be used by the fede courts in determining whether a private cause of action may implied under federal statutes that do not expressly provi therefor. In the October 1978 Term alone, certiorari w granted in five cases which posed that issue. See *Redingto* supra, 442 U.S. at 562 n.1. The Court could not state mo clearly than it already has that the question is "one of statuto construction" and that the task of the judiciary "is limit solely to determining whether Congress intended to create t private right of action asserted. . . ." (442 U.S. at 568). T Court has also taken great pains to articulate appropriate ru of statutory construction for the performance of this task.

Petitioners' request for discretionary review to repeat tho rules in connection with the Act, therefore, prompts citation the Court's conclusion in *Kissinger v. Reporters Committee f Freedom of the Press,* 445 U.S. 136, 148 (1980) that:

> This Court has spent too many pages identifying t factors relevant to uncovering congressional intent imply a private cause of action to belabor the topic her

Divination of congressional intent is, as often as not, imprecise science. Although a question of law, it is a ta which involves a fact finding process, based on the structure the statute involved as a totality, the legislative history relati

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23 *Piper v. Chris-Craft Industries, Inc.,* 430 U.S. 1 (1977); *Santa C Pueblo v. Martinez,* 436 U.S. 49 (1978); *Chrysler Corp. v. Brown,* U.S. 281 (1979); *Cannon v. University of Chicago,* 441 U.S. (1979); *Davis v. Passman,* 442 U.S. 228 (1979); *Touche Ross & Co Redington,* 442 U.S. 560 (1979); *Transamerica Mortgage Advisor Lewis,* 444 U.S. 11 (1979); *Kissinger v. Reporters Committee Freedom of the Press,* 445 U.S. 136 (1980).

to the Act, and the reasonable inferences as to congressi intent that may be drawn from both.

What petitioners are really questioning, therefore, is whether the court below applied the proper standard or the right rules of statutory construction, but rather the corr ness of the facts found by the court below and the infere drawn therefrom as to congressional intent. In essence tioners simply disagree with the majority's conclusion a what the intent of Congress was.

Certiorari, however:

> . . . is not, and never has been, primarily concerned the correction of errors in lower court decisions. In al all cases within the Court's appellate jurisdiction, petitioner has already received one appellate review o case. . . . The function of the Supreme Court is, t fore, to resolve conflicts of opinion on federal quest that have arisen among lower courts, to pass upon q tions of wide import under the Constitution, laws, treaties of the United States, and to exercise supervi power over lower federal courts. If we took every cas which an interesting legal question is raised, or our *p facie* impression is that the decision below is erroneo we could not fulfill the Constitutional and statutory sponsibilities placed upon the Court.[24]

Finally, the specter raised by petitioners that the deci below threatens the industry with an uncontemplated "e mous liability" and will open the courts to vexatious litiga (Petition pp. 4-5) is simply unfounded. Independent of private cause of action asserted under the Act, FCMs (inc ing petitioners)[25] remain liable under the antitrust laws,

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24 Chief Justice Vinson, "Work of the Federal Courts," Address t American Bar Association, September 7, 1949, 69 Supreme C Reporter V.

25 As to petitioners, even after the decision of the District C dismissing all counts under the Act, an antitrust count remains

(footnote continued on next

particularly § 1 of the Sherman Act (15 U.S.C concerted market manipulation.[26] The impact of su from which Congress clearly did not insulate the ind the threat of treble damages, belies any notion tha was particularly concerned about protecting the ind large liabilities.

CONCLUSION

The opinion below which found an implied privat action under the Act is consistent with the decisic Court and well supported by the record regarding th Congress. No purpose would be served by this Cou of that opinion. The petition for a writ of certior therefore be denied.

Respectfully submitted,

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---

trial. Consequently even were the Court of Appeals r tioners would have to defend against the claim for treble

26 In the court below, both the majority (p. 4088) and th 4170-71) found that the 1974 amendments to the CEA liability under the antitrust laws of persons involved in t tion of the commodities markets.